

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BRADLEY-FERN HALL I, LLC,	)	
	)	
Plaintiff,	)	Civil Action
	)	No. 19-11181-DPW
	)	
v.	)	
	)	
MMA FERN HALL CROSSING LLC,	)	
and BFIM SPECIAL LIMITED	)	
PARTNER, INC.,	)	
	)	
Defendant.	)	

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DOUGLAS COMPANY, LLC,	)	
	)	
Plaintiff,	)	Civil Action
	)	No. 20-10875-DPW
v.	)	
	)	
MMA KINGS CROSSING, LLC; MMA	)	
SHELL POINTE, LLC; MMA	)	
DOUGLAS MONTAGUE, LLC;	)	
and BFIM SPECIAL LIMITED	)	
PARTNER, INC.,	)	
Defendants.	)	

BEFORE THE HONORABLE DOUGLAS P. WOODLOCK  
UNITED STATES DISTRICT JUDGE

VIDEOCONFERENCE

October 9, 2020

John J. Moakley United States Courthouse  
One Courthouse Way  
Boston, Massachusetts 02210

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## P R O C E E D I N G S

COURTROOM CLERK: Civil Action Number 19-11181,  
*Bradley Fern Hall v. MMA Fern Hall Crossing*, and with that,  
20-10875, *Douglas Company LLC v. MMA Kings Crossing LLC*.

To all participants, pursuant to Local Rule 83.3 all  
persons granted remote access to these proceedings are reminded  
of the general prohibition against photographing, recording and  
rebroadcasting of court proceedings. Violation of these  
prohibitions may result in sanctions.

Would counsel starting with the plaintiffs please  
state your name for the record.

MR. DAVENPORT: Good afternoon. David Davenport from  
Winthrop & Weinstine on behalf of plaintiff. My colleague,  
Alex Hagstrom, is also on the Zoom line, along with my client  
Bradley Queener, also Drew Schaumber who is a representative of  
Douglas Company for the second case.

MR. LURIE: David Lurie for the defendants, Your  
Honor.

THE COURT: All right. Karen Friedman for the  
defendants as well.

MR. PAONESSA: Your Honor, Greg Paonessa from Burns &  
Levinson on behalf of the plaintiffs.

THE COURT: All right. Well, since I got notice of  
the case from Judge Casper, I've been trying to go through and  
think about what I can offer on this. I guess what probably is

1 of most immediate interest is an immediate resolution of the  
2 case or as prompt a resolution of the case as possible since  
3 people, I suppose, want to get on with their lives.

4 I'm sure that what's especially desirable is a  
5 successful resolution, but I can't provide that to both parties  
6 I don't think here. But I can provide, I think, a way of  
7 getting to a conclusion at least in the trial court as promptly  
8 as possible.

9 As I've read the materials in Douglas, I'm not sure  
02:34 10 that there's anything there that needs -- I'm afraid someone  
11 has come on who we're getting feedback from -- anything there  
12 that really is significantly different from what's happening in  
13 Fern Hall, but you'll tell me that, I'm sure.

14 My basic view right now is that I will be denying full  
15 summary judgment in Fern Hall and that I will be treating it as  
16 a jury-waive case. My view I suppose is that the same thing  
17 would happen with the Douglas cases or the Douglas  
18 partnerships, and I don't know if there's anything in there  
19 that's unusual that I should be concerned about.

02:35 20 Here is what I propose, and I propose it, not finally  
21 determine it, but I would issue an opinion in Fern Hall in the  
22 next two weeks that would outline my resolution of the motion  
23 for partial summary judgment and the question of jury waiver  
24 that I think should provide you with as complete an  
25 interpretation of the contract, which I believe is a model for

1 the Douglas contracts, as possible. An outline, identifying  
2 with some specificity, the areas in which I think there will be  
3 some need for factfinding on my part as the finder of fact  
4 under a jury-waive system.

5 Of course my determination of summary judgment is not  
6 a determination of the facts but simply a question of whether  
7 or not there's a genuine issue of material fact that has to be  
8 resolved in a separate setting.

9 My sense is that what we're really talking about,  
02:37 10 unless there is some significant battles or the parties want to  
11 have some sort of significant battles over questions of  
12 timeliness -- and even there I don't think that there's a  
13 genuine issue of material fact -- it's really about experts.  
14 It's about how reasonable the appraisal is of Mr. Jones and  
15 what that appraisal would look like if there were introduced  
16 the capital accounts of the investor limited partners. That's  
17 broad-brush.

18 So I outline that to see if the parties have another  
19 way of getting to this promptly. What I see as a battle of  
02:38 20 experts, it may well be that you're going to have to have a  
21 little bit more discovery, but not much, to get to that, and  
22 that it would be effectively applicable for all of the cases  
23 here unless there's some unique circumstances among one or the  
24 other of the Douglas cases that I haven't been able to tease  
25 out yet because I'm not fully, obviously, familiar.

1           So maybe, Mr. Davenport, I'll look to you first.

2           MR. DAVENPORT: In terms of if we might need some more  
3           discovery before the bench trial?

4           THE COURT: Well, more broadly, as a way of dealing  
5           with this, I suppose if you -- you know, you see my opinion,  
6           and you say, "Well, it really doesn't apply to these other  
7           cases, we have got to do something else," of course I'll  
8           understand that.

9           But I want to get it out there for you to understand  
02:38 10          the approach that I'm taking to this, and the approach that I'm  
11          taking is that I do have to have evidence in this case, and the  
12          evidence focuses both on the question of reasonableness of the  
13          appraisal that Mr. Jones did, and inextricably intertwined is  
14          what kind of valuation would result from inclusion of the  
15          capital accounts, and the capital accounts get developed more  
16          fully with some sort of evaluation of a forced sale.

17          So if I'm missing something, in broad-brush, about how  
18          to proceed in this case in a prompt way, I want you to tell me.

19          MR. DAVENPORT: I don't think so. I mean, I think the  
02:39 20          Douglas cases are very much in line with the Fern cases, which  
21          is why we all agreed to seek reassignment so it would be before  
22          you, because I think we all anticipate that your ruling and the  
23          ultimate outcome will have a pretty significant effect on the  
24          Douglas case. Same appraiser, same methodology, generally the  
25          same contracts, largely the same timeline, just a little bit

1 later the next year.

2 So it's a little hard, other than agreeing with you  
3 conceptually, to see the court's order, understand the next  
4 steps, but it's hard for me to imagine that what you're  
5 outlining is inconsistent with at least plaintiffs' in both  
6 cases thought process.

7 THE COURT: Okay. Mr. Lurie, any thought?

8 MR. LURIE: Right now I'm not aware of any issue with  
9 the Douglas case that would prevent the procedure that you  
02:40 10 outline. It makes sense to me.

11 THE COURT: Okay. So what I think would be the most  
12 efficient and effective thing for me to do is to get this  
13 memorandum out. I've spent a fair amount of time with the  
14 documents both at the pleading stage and now on summary  
15 judgment. And I think rather than take your time in argument,  
16 I had to take my time getting that thing done. I'm not sure  
17 that there's anything more that's going to be added in argument  
18 that I haven't seen in the papers already here.

19 What I propose to do is issue the memorandum as  
02:41 20 promptly as I can. I have other things I have to deal with in  
21 the next two weeks, but I think I can get it out, and then, say  
22 ten days after the memorandum, have the parties submit a  
23 proposed scheduling order designed to bring the case to  
24 resolution.

25 As I said, the factfinding I believe has to be done by

1 jury-waive, that is nonjury, which, as it happens, means that  
2 this can happen a lot faster.

3 We're just starting criminal jury trials now. We are  
4 finding that while jurors are, commendably frankly, willing to  
5 serve, the process of doing that and social distancing in our  
6 courtrooms is extraordinarily difficult, and it's made much  
7 easier, obviously, if we go jury-waive since we don't have to  
8 have jurors in a case, even in a civil case, which we're  
9 limiting now to eight-person cases.

02:42 10 But priority in jury cases is for persons in custody,  
11 and we've got a ways to go with that. I'm not even certain  
12 that we'll be able to do two-person cases, two-defendant cases  
13 in the courtroom with criminal cases because we have to limit  
14 the size of our complement of people in the large courtrooms to  
15 26, no more than 26 people.

16 While I was fairly deeply involved in the design of  
17 this building, I thought those courtrooms were pretty big and  
18 in fact have tried a 12-defendant criminal case with defendants  
19 having two counsel each in the courtroom. Now we can't do  
02:43 20 that. There's just no way to do it and limit the size of the  
21 complement there.

22 That's by way of general background. We'll talk more  
23 specifically about what needs to be done, but you can start  
24 thinking along those lines while I spend some time getting this  
25 thing out to you. And as I said, I think ten days might be



1 enough to narrow this so we can get right to the nub of the  
2 case as promptly as possible. And I think with a nonjury trial  
3 I can give you something pretty promptly, which is not  
4 something I can say to either criminal and civil cases now.  
5 I'm in a cue with 13 other judges for criminal cases, and we  
6 have to take turns in the courtrooms that we use.

7 So any other thoughts, any other comments that you'd  
8 like to offer at this point?

9 MR. DAVENPORT: No, Your Honor.

02:44 10 MR. LURIE: No, Your Honor.

11 THE COURT: Okay. So I will get this out to you as  
12 promptly as I can, and then we'll go from there along those  
13 lines, unless, after you look at it you say, "No, no, we can't  
14 do that." And of course I will understand that you understand  
15 your cases better than I, but that will at least get this thing  
16 going more promptly to an ultimate resolution at least here in  
17 this court. Okay?

18 If there's nothing further, then we will be in recess.  
19 Thank you.

20 (Adjourned, 2:44 p.m.)  
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23  
24  
25

1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Kelly Mortellite, Registered Merit Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 14th day of October, 2020.

10

11 /s/ Kelly Mortellite

12 \_\_\_\_\_

13 Kelly Mortellite, RMR, CRR

14 Official Court Reporter

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